

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JARED HUBBARD,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 1:23-cv-00962-JLT-SAB

ORDER DISREGARDING NOTICE OF
VOLUNTARY DISMISSAL

(ECF No. 23)

FOURTEEN DAY DEADLINE

Plaintiff Jared Hubbard filed this action against Defendants United States of America and Holly May Peacock-Hickey on June 27, 2023. (ECF No. 1.) On October 2, 2023, Defendant United States of America filed an answer to the complaint. (ECF No. 8.) On July 17, 2024, the parties participated in a settlement conference before Chief Magistrate Judge Carolyn K. Delaney. (ECF No. 24.) The parties reached an agreement to settle this action and were ordered to file dispositional documents within sixty days. (*Id.*) On September 3, 2024, Plaintiff filed a notice of voluntary dismissal dismissing the action with prejudice. (ECF No. 25.)

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Here, the United States has filed an answer, so Plaintiff cannot voluntarily dismiss this

1 action pursuant to Rule 41(a)(1)(A)(i).

2 Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an
3 action without a court order by filing a stipulation of dismissal signed by all parties who have
4 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

5 A party may also dismiss an action by filing a motion requesting the Court to dismiss the
6 action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is
7 addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co.
8 Inc., 679 F.2d 143, 145 (9th Cir. 1982).

9 Plaintiff’s notice of voluntary dismissal is defective under Rule 41(a) because it is not a
10 signed stipulation by all parties who have appeared, and it is not a motion under Rule 41(a)(2).
11 If Plaintiff wishes to dismiss this action, he is required to comply with the procedures set forth in
12 Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under Rule
13 41(a)(2).

14 Accordingly, Plaintiff’s notice of voluntary dismissal is HEREBY DISREGARDED.
15 Plaintiff shall file a request for dismissal that complies with Rule 41 within **fourteen (14) days**
16 from the date of entry of this order.

17
18 IT IS SO ORDERED.

19 Dated: **September 4, 2024**


UNITED STATES MAGISTRATE JUDGE